

AMENDED IN ASSEMBLY JANUARY 4, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 284

Introduced by Assembly Member Nestande
(Principal coauthor: Senator Emmerson)

February 8, 2011

~~An act to amend Section 2069 of, and to add Section 2836 to, the Fish and Game Code, relating to the Natural Community Conservation Planning Act. An act to add Section 1587 to the Fish and Game Code, relating to ecological reserves.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 284, as amended, Nestande. ~~Desert Renewable Energy Conservation Plan: Coachella Valley: exclusion. Ecological reserves: Mirage Trail.~~

Existing law authorizes the Department of Fish and Game, with the approval of the Fish and Game Commission, to, among other things, maintain, use, and administer land suitable for the purpose of establishing ecological reserves. Existing law authorizes the Department of Fish and Game to construct facilities and conduct programs in ecological reserves it selects to provide natural history education and recreation if those facilities and programs are compatible with the protection of the biological resources of the reserve.

This bill would require the department to open the Mirage Trail within the Magnesia Spring Ecological Reserve to hiking and biking recreational activities.

~~The Natural Community Conservation Planning Act authorizes the Department of Fish and Game to enter into agreements with any person or public entity for the purpose of preparing a natural community~~

conservation plan, in cooperation with a local agency that has land use permit authority over the activities proposed to be addressed in the plan, to provide comprehensive management and conservation of multiple wildlife species. The California Endangered Species Act authorizes the department, in consultation with the State Energy Resources Conservation and Development Commission (Energy Commission) and, to the extent practicable, the United States Fish and Wildlife Service and the United States Bureau of Land Management, to design and implement actions to protect, restore, or enhance the habitat of plants and wildlife that can be used to fully mitigate the impacts of the take of endangered, threatened, or candidate species resulting from certain solar thermal and photovoltaic powerplants in the planning area of the Desert Renewable Energy Conservation Plan, a natural community conservation plan in the Mojave and Colorado Desert regions.

This bill would exclude any area covered by the Coachella Valley Multiple Species Habitat Conservation Plan from the Desert Renewable Energy Conservation Plan.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1587 is added to the Fish and Game Code,
- 2 to read:
- 3 1587. The department shall open the Mirage Trail within the
- 4 Magnesia Spring Ecological Reserve to hiking and biking
- 5 recreational activities.
- 6 SECTION 1. Section 2069 of the Fish and Game Code is
- 7 amended to read:
- 8 2069. (a) For purposes of this section, the following terms
- 9 have the following meanings:
- 10 (1) (A) “Desert Renewable Energy Conservation Plan” means,
- 11 except as provided in subparagraph (B), the completed conservation
- 12 plan in the Mojave and Colorado Desert regions adopted pursuant
- 13 to the Natural Community Conservation Planning Act (Chapter
- 14 10 (commencing with Section 2800)), and covers the geographical
- 15 area described in Section 4 of, and depicted in Exhibit A to, the
- 16 “Draft Planning Agreement by and among California Department
- 17 of Fish and Game, California Energy Commission, United States
- 18 Bureau of Land Management, and United States Fish and Wildlife

1 ~~Service for the Desert Renewable Energy Conservation Plan,”~~
2 ~~document REAT-1000-2009-034, dated October 2009.~~

3 ~~(B) “Desert Renewable Energy Conservation Plan” does not~~
4 ~~include any area covered by the Coachella Valley Multiple Species~~
5 ~~Habitat Conservation Plan.~~

6 ~~(2) “Energy Commission” means the State Energy Resources~~
7 ~~Conservation and Development Commission.~~

8 ~~(b) The department, in consultation with the Energy Commission~~
9 ~~and, to the extent practicable, the United States Fish and Wildlife~~
10 ~~Service and the United States Bureau of Land Management, may~~
11 ~~design and implement actions, including the purchase of land and~~
12 ~~conservation easements, to protect, restore, or enhance the habitat~~
13 ~~of plants and wildlife that can be used to fully mitigate the impacts~~
14 ~~of the take of endangered species, threatened species, or candidate~~
15 ~~species, for purposes of paragraph (2) of subdivision (b) of Section~~
16 ~~2081 and Chapter 6 (commencing with Section 25500) of Division~~
17 ~~15 of the Public Resources Code, resulting from solar thermal and~~
18 ~~photovoltaic powerplants in the Desert Renewable Energy~~
19 ~~Conservation Plan planning area that meet each of the following~~
20 ~~requirements:~~

21 ~~(1) Either the Energy Commission determines that the~~
22 ~~application for certification was complete by February 1, 2010, or~~
23 ~~the local government in which the project is located has determined~~
24 ~~the project permit application is complete or has issued a notice~~
25 ~~of preparation of an environmental impact statement pursuant to~~
26 ~~Division 13 (commencing with Section 21000) of the Public~~
27 ~~Resources Code by February 1, 2010.~~

28 ~~(2) The developer or owner of the proposed powerplant or~~
29 ~~generation facility has applied for, and would qualify for, funding~~
30 ~~under the federal American Recovery and Reinvestment Act of~~
31 ~~2009 (Public Law 111-5). For purposes of this paragraph,~~
32 ~~“funding” means a loan guarantee made pursuant to Section 406~~
33 ~~of the act (42 U.S.C. Sec. 16516) or a grant for specified energy~~
34 ~~property in lieu of a tax credit provided pursuant to Section 1603~~
35 ~~of Division B of the act, which division is titled the American~~
36 ~~Recovery and Reinvestment Tax Act of 2009.~~

37 ~~(c) A mitigation action may only be used for the mitigation~~
38 ~~purposes described in subdivision (b) if it meets one of the~~
39 ~~following conditions:~~

1 ~~(1) The department has implemented the mitigation action and~~
2 ~~determined that the action has resulted in the protection, restoration,~~
3 ~~or enhancement of the habitat of one or more species that are~~
4 ~~proposed to be covered by the Desert Renewable Energy~~
5 ~~Conservation Plan, and that are located in the planning area, and,~~
6 ~~based upon that determination, can be used, for purposes of~~
7 ~~paragraph (2) of subdivision (b) of Section 2081, to fully mitigate~~
8 ~~the impacts of the take of the species from one or more projects~~
9 ~~identified in subdivision (b).~~

10 ~~(2) The mitigation action is included in an interim mitigation~~
11 ~~strategy for projects identified in subdivision (b). An interim~~
12 ~~mitigation strategy pursuant to this paragraph shall be developed~~
13 ~~by the department, in consultation with the Energy Commission~~
14 ~~and, to the extent practicable, the United States Fish and Wildlife~~
15 ~~Service and the United States Bureau of Land Management, and~~
16 ~~shall include all of the following:~~

17 ~~(A) A description of specific mitigation areas and specific~~
18 ~~actions on public or private land within the Desert Renewable~~
19 ~~Energy Conservation Plan planning area that are to be~~
20 ~~implemented, including a focus on habitat preservation, while also~~
21 ~~including enhancement or restoration actions that will do all of the~~
22 ~~following:~~

23 ~~(i) Contribute to the conservation of each candidate species,~~
24 ~~threatened species, or endangered species for which a permit is~~
25 ~~issued.~~

26 ~~(ii) Adopt a regional planning perspective that provides a~~
27 ~~foundation for, or that will complement, any conservation strategy~~
28 ~~to be developed for the Desert Renewable Energy Conservation~~
29 ~~Plan.~~

30 ~~(iii) Implement mitigation actions within a reasonable period~~
31 ~~of time relative to the impact to the affected candidate species,~~
32 ~~threatened species, or endangered species, including, where~~
33 ~~feasible, advance mitigation. For purposes of this clause, “advance~~
34 ~~mitigation” means mitigation implemented before, and in~~
35 ~~anticipation of, future impacts to natural resources.~~

36 ~~(iv) Include a description of the species that would be benefited~~
37 ~~by each mitigation action and how it would be benefited.~~

38 ~~(B) A cost estimate for each action, whether on public or private~~
39 ~~land, using total cost accounting, including, as applicable, land~~
40 ~~acquisition costs, conservation easement costs, monitoring costs,~~

1 ~~transaction costs, restoration costs, the amount of a nonwasting~~
2 ~~endowment account for land management or easement stewardship~~
3 ~~costs by the department or other management entity, and~~
4 ~~administrative costs.~~

5 ~~(d) The interim mitigation strategy shall be based on best~~
6 ~~available science and shall be reviewed by the Desert Renewable~~
7 ~~Energy Conservation Plan independent science advisors. The~~
8 ~~department shall seek and consider comments from the Desert~~
9 ~~Renewable Energy Conservation Plan independent science advisors~~
10 ~~in the design and location of each mitigation action implemented~~
11 ~~pursuant to this section. If the department elects to not incorporate~~
12 ~~comments of the independent science advisors into mitigation~~
13 ~~actions, the department shall explain the reasons for that decision~~
14 ~~in writing.~~

15 ~~(e) The interim mitigation strategy shall be completed by the~~
16 ~~department no later than 60 days following the operative date of~~
17 ~~the act adding this section.~~

18 ~~(f) (1) This section shall not modify the requirements of Section~~
19 ~~2081, including the requirement to, where feasible, avoid and~~
20 ~~minimize impacts, the requirements of Division 13 (commencing~~
21 ~~with Section 21000) of, or the requirements of Chapter 6~~
22 ~~(commencing with Section 25500) of Division 15 of, the Public~~
23 ~~Resources Code, or affect the existing authority of the department~~
24 ~~to authorize mitigation actions to comply with this chapter.~~

25 ~~(2) With respect to the Energy Commission, in the case of an~~
26 ~~applicant seeking certification for a solar thermal power plant~~
27 ~~pursuant to Chapter 6 (commencing with Section 25500) of~~
28 ~~Division 15 of the Public Resources Code, or a lead agency, as~~
29 ~~defined in Section 21067 of the Public Resources Code, in the case~~
30 ~~of an applicant seeking approval of a photovoltaic powerplant, the~~
31 ~~sole effect of a mitigation action described in subdivision (c), and~~
32 ~~paid for through the deposit of fees as described in Section 2099,~~
33 ~~is to relieve an applicant of the obligation to directly take actions~~
34 ~~which are taken instead by the department or its contractor or~~
35 ~~designee pursuant to subdivision (b) to meet the applicant's~~
36 ~~obligations with respect to the powerplant's impacts to species~~
37 ~~and habitat. The mitigation action and deposit of fees shall not~~
38 ~~relieve the applicant of any other obligation, or the Energy~~
39 ~~Commission or the lead agency of any of its existing requirements~~
40 ~~of Division 13 (commencing with Section 21000) of, or the~~

1 requirements of Chapter 6 (commencing with Section 25500) of
2 Division 15 of, the Public Resources Code to analyze, avoid,
3 minimize, or mitigate impacts to species and habitat, or make the
4 findings required by those statutes.

5 (g) The mitigation actions implemented pursuant to this section
6 shall be incorporated into the Desert Renewable Energy
7 Conservation Plan upon the finalization of the plan, to the extent
8 the mitigation actions are consistent with the plan's conservation
9 strategy.

10 SEC. 2. Section 2836 is added to the Fish and Game Code, to
11 read:

12 2836. The Desert Renewable Energy Conservation Plan, as
13 defined in Section 2069, shall not include any area covered by the
14 Coachella Valley Multiple Species Habitat Conservation Plan.